

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN RE ESPAR ANTITRUST LITIGATION

This Document Applies to:  
*All Actions*

No. 15-MC-940 (JG) (JO)

**STATUS REPORT**

Pursuant to the Court’s May 22, 2015 Order (No. 15-cv-1343-JG-JO, ECF No. 27), Triple Cities Acquisition, LLC d/b/a Cook Brothers Truck Parts (“Triple Cities”) hereby submits the following status report concerning a leadership structure for the Direct Purchaser Plaintiffs (“DPPs”).

As of the May 22, 2015 status conference, each of the DPP Plaintiffs who had filed a case—Triple Cities, National Trucking Financial Reclamation Services, and Trailer Craft Inc.—had also filed motions seeking appointment of their counsel as interim lead counsel for the DPP class.<sup>1</sup> On June 3, 2015, Plaintiff Guay Brothers Co., Inc. filed a complaint on behalf of itself and a class of direct purchasers (No. 15-cv-3225), which was assigned to the Honorable John Gleeson.

DPP counsel in all four cases have conferred regarding a leadership structure for the DPP class. While all four DPP counsel are amenable to having a four-member Executive Committee (subject, of course, to whatever alternative structure the Court should decide upon), Triple Cities

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<sup>1</sup> See Motion Appointment of Interim Lead Counsel for DPPs (ECF No. 9), *Trailer Craft Inc. v. Espar Inc.*, No. 15-cv-2411 (E.D.N.Y. May 18, 2015); Motion to Appoint Counsel (ECF No. 14), *Triple Cities Acquisition, LLC v. Espar, Inc.*, No. 15-cv-1343 (E.D.N.Y. Apr. 22, 2015); Motion to Consolidate and for Appointment of Counsel (ECF No. 10), *Nat’l Trucking Fin. Reclamation Servs., LLC v. Espar Inc.*, No. 15-cv-2310 (E.D.N.Y. Apr. 28, 2015).

believes that an Executive Committee Chair is also necessary to ensure the efficient prosecution of this litigation on the DPPs' behalf. Such a structure would be inclusive while simultaneously providing a single firm to interact with the Court and otherwise coordinate the litigation as the case advances. The Chair of the Executive Committee would have the responsibility to oversee the litigation, including any subsequent related or tag-along cases, on behalf of the DPPs. Any agreements entered into by the Chair with defendants or their counsel would be binding on all DPPs. A similar structure was utilized in "Case Management Order No. 1" (Dkt. No. 33) in *In re Optical Disk Drive Prods. Antitrust Litig.*, No. M:10-2143 VRW (N.D. Cal.), attached hereto as Exhibit 1. Triple Cities therefore requests that the Court decide, if it chooses to accept an Executive Committee for the DPPs: (a) whether there should be a Chair of that committee, (b) what responsibilities it should have, and (c) which firm or firms should occupy that position.

For the reasons stated in Triple Cities' Motion to Appoint Interim Lead Counsel, incorporated herein by reference, Triple Cities respectfully requests that its counsel, Hausfeld LLP ("Hausfeld"), be appointed Chair of the Executive Committee. Hausfeld not only meets all of the necessary criteria for leadership under Federal Rule of Civil Procedure 23(g), but is also in the strongest position of the DPP counsel to be the Executive Committee Chair here. Hausfeld has taken the lead in this case since inception, filing the first direct purchaser action. After Triple Cities received a potential victim letter from the Department of Justice on February 10, 2015, Hausfeld thoroughly investigated the case prior to filing the first DPP complaint on Triple Cities' behalf. Hausfeld also has a long history of working inclusively with other firms, including many

of the other DPP counsel, and is committed to doing the same here. Hausfeld, therefore, is well-positioned to serve as Executive Committee Chair.<sup>2</sup>

Dated: June 5, 2015

Respectfully submitted,

/s/ Michael D. Hausfeld

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*Counsel for Direct Purchaser Plaintiff Triple  
Cities Acquisition LLC*

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<sup>2</sup> The Court issued an Order on the morning of June 5, 2015 scheduling both the status conference and a briefing schedule related to lead counsel for the indirect purchaser plaintiffs. Should the Court determine that further briefing is necessary to resolve the leadership issue for the DPPs, Triple Cities requests that the same briefing schedule apply to the DPPs as the one that applies the indirect purchaser plaintiffs. Triple Cities also requests that the same conference schedule contemplated in the indirect purchaser actions, with the first conference to be held on August 7, 2015 with quarterly conferences thereafter, also apply to the direct purchaser actions.

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: OPTICAL DISK DRIVE  
PRODUCTS ANTITRUST LITIGATION

MDL DOCKET NO M:10-2143 VRW

ALL CASES

CASE MANAGEMENT ORDER No 1

- (1) This order shall govern the practice and procedure in those actions filed in, removed to and transferred by the Judicial Panel on Multidistrict Litigation pursuant to its order of April 2, 2010 to this district and related as part of the above-entitled litigation. See Attachment A. This order shall also govern the practice and

1 procedure in any tag-along actions transferred to this  
2 court by the Judicial Panel on Multidistrict Litigation  
3 pursuant to Rule 1 of the Rules of Procedure of that  
4 Panel subsequent to the filing of the final transfer  
5 order by the clerk of this court and any related actions  
6 subsequently filed in this court or otherwise transferred  
7 or removed to this court.

8 (2) The actions described in paragraph 1 of this order are  
9 coordinated for pretrial purposes.

10 (3) The actions shall be placed in one or the other of two  
11 groups of cases: (a) Direct purchaser cases shall be  
12 those cases involving claims against defendants by  
13 plaintiffs that allegedly purchased products from  
14 defendants; and (b) Indirect purchaser cases shall be all  
15 other cases. See Attachment A.

16  
17 (4) A signed original of any pleading or paper shall be e-  
18 filed; no copies will be necessary. All papers filed in  
19 these actions shall bear the identification "MDL Docket  
20 No M 10-2143 VRW" and when such paper relates to all  
21 these actions, the MDL docket number shall be followed  
22 only by the notation "ALL CASES." If the pleading or  
23 paper relates to all direct purchaser cases, the MDL  
24 docket number shall be followed by the notation "DIRECT  
25 PURCHASER CASES"; if the pleading or paper relates to all  
26 indirect purchaser cases, the MDL docket number shall be  
27 followed by the notation "INDIRECT PURCHASER CASES." If  
28 such pleading or paper does not relate to all of these

actions or all direct purchaser or indirect purchaser cases the individual docket numbers assigned by the clerk of this court of those actions to which the paper relates shall also be listed. If such paper relates to five or fewer actions the abbreviated caption of each of the actions may be listed opposite its number.

(5) Any paper which is to be filed in any of these actions shall be filed with the clerk of this court and not with the transferor district court.

(6) Counsel who appeared in the transferor district court prior to the transfer need not enter a separate appearance before this court.

(7) Any attorney who wishes to have his or her name added to or deleted from the service list may do so upon request to the clerk of this court with notice to all other persons on such service list. Service shall be deemed sufficient if made upon all attorneys.

(8) Upon remand of any of these actions, the parties will be required to provide to this court copies of any necessary and relevant papers previously filed.

(9) Hearings shall not be held on any motions filed except by order of court upon such notice as the court may direct.

(10) Any paper filed in any of these actions which is substantially identical to any other paper filed in another of these actions shall be sufficient if it

incorporates by reference the paper to which it is substantially identical. Where counsel for more than one party plan to file substantially identical papers they shall join in the submission of such papers and shall file only one paper on behalf of all so joined.

(11) Any orders including protective orders previously entered by this court or any transferor district court shall remain in full force and effect unless modified by this court upon application.

(12) The court will be guided by the Manual for Complex Litigation, Fourth, and counsel are directed to familiarize themselves with that publication.

(13) Having considered the comments and proposals of the parties presented at the initial conference held on May 6, 2010, the court, pursuant to the agreement of all direct purchaser plaintiffs' counsel, ORDERS:

There shall be a Committee of Direct Purchaser Plaintiffs' Counsel and its members shall be comprised of the following firms: Berman DeValerio; Cotchett Pitre & McCarthy; Hausfeld LLP; Kaplan Fox & Kilsheimer LLP; Lieff Cabraser Heimann & Bernstein, LLP; Pearson, Simon, Warshaw & Penny, LLP; and Saveri & Saveri, Inc.

The Committee shall be chaired by:

Guido Saveri (Cal State Bar No 22349), Saveri & Saveri, Inc, 706 Sansome St, San Francisco, CA 94111 (415)217-6810

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1 The Chairman of the Committee shall have the  
2 responsibility to oversee the litigation, including any  
3 subsequent related or tag-along cases, on behalf of the  
4 direct purchaser plaintiffs. Any agreements entered into  
5 by the Chairman of the Committee with defendants or their  
6 counsel shall be binding on all direct purchaser  
7 plaintiffs. The Chairman and his office shall have the  
8 following administrative responsibilities:

9 To receive orders, notices, correspondence, and telephone  
10 calls from the court on behalf of all direct purchaser  
11 plaintiffs, and shall be responsible for preparing and  
12 distributing the same to all direct purchaser plaintiffs'  
13 counsel upon direction from the court;

14 To collect funds from direct purchaser plaintiffs'  
15 counsel as needed to defray the common costs incurred in  
16 the prosecution of this litigation;

17 To require and collect from direct purchaser plaintiffs'  
18 counsel periodic reporting of their time and expenses  
19 incurred in the litigation;

20 To maintain and distribute a master service list of all  
21 parties and their respective counsel;

22 To perform such other duties and undertake such other  
23 responsibilities as deemed necessary or desirable in  
24 connection with the prosecution of the litigation;

25 To coordinate the efficient work of the Committee of  
26 Direct Purchaser Plaintiffs' Counsel on all aspects of  
27 the litigation;  
28

1 To organize and develop a plan for conducting the  
2 litigation on behalf of all direct purchaser plaintiffs,  
3 assigning tasks among direct purchaser plaintiffs'  
4 counsel, and to call and conduct meetings of the  
5 Committee, as needed, to conduct effectively the  
6 litigation;

7 To consult with and employ experts and consultants;

8 To coordinate the briefing and argument of motions and  
9 preparation, service and filing of opposing briefs in  
10 proceedings initiated by other parties;

11 To coordinate the initiation and conduct of discovery  
12 proceedings, including, but not limited to, the  
13 preparation of joint written interrogatories and requests  
14 for the production of documents;

15 To coordinate the selection of counsel to act as  
16 spokesperson(s) at any hearings or pretrial conferences;  
17 and  
18

19 To appoint Joseph M Alioto as Special Trial Counsel for  
20 the direct purchaser plaintiffs and delineate his  
21 responsibilities.

22 (14) In order to make discovery less costly and burdensome,  
23 counsel are directed to appoint discovery coordinators to  
24 handle discovery pertaining to all direct purchaser  
25 plaintiffs and defendants or discovery substantially the  
26 same for all direct purchaser plaintiffs or defendants.

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1 The Committee of Direct Purchaser Plaintiffs' Counsel  
2 shall appoint one, and only one, attorney to coordinate  
3 all discovery undertaken by plaintiffs or sought from  
4 plaintiffs and that one attorney ("Plaintiffs' Discovery  
5 Coordinator") shall have sole responsibility and  
6 authority to bring a discovery matter to the attention of  
7 the court and shall do so only by a telephone call to the  
8 courtroom deputy clerk, Cora Delfin Klein at (415) 522-  
9 2039 or by e-mail to her.

10 Similarly, defendants' counsel shall appoint one, and  
11 only one, of their number as "Defendants' Discovery  
12 Coordinator," who shall have sole responsibility and  
13 authority to bring a discovery matter to the attention of  
14 the court if the discovery is undertaken on behalf of all  
15 direct purchaser defendants or is sought from all direct  
16 purchaser defendants, or if the discovery is  
17 substantially identical to that directed to all direct  
18 purchaser defendants, and shall do so only by a telephone  
19 call to the courtroom deputy clerk, Cora Delfin Klein at  
20 (415)522-2039 or by e-mail to her.

21 (15) As set forth by the court at the May 6 hearing:

22 Supplemental briefing regarding attorneys' fees proposals  
23 from indirect plaintiffs' counsel are due on or before  
24 May 13, 2010. Following submission of the fee proposals,  
25 the court anticipates filing a case management order for  
26 the indirect purchaser cases similar in form and  
27 substance to this order.  
28

1 The government's anticipated motion to stay these  
2 proceedings shall be heard on June 24, 2010 at 10am.  
3 Direct purchaser plaintiffs shall file their consolidated  
4 complaint on or before August 5, 2010.  
5 A FRCP 26(f) conference shall take place on or before  
6 August 19, 2010 at 3:30pm.  
7 Initial disclosures pursuant to FRCP 26(a) shall be made  
8 on or before September 2, 2010.  
9 A further case management conference shall be held on  
10 September 16, 2010. Counsel shall furnish suggestions  
11 for items to be included on the agenda for this  
12 conference on or before September 10.  
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15 IT IS SO ORDERED

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18 VAUGHN R WALKER  
19 United States District Chief Judge  
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APPENDIX A

(Cases listed by plaintiff's name and case number)

DIRECT PURCHASER ACTIONS:

CMP Consulting Services, C09-5114 VRW

Diana Saed, C10-1619 VRW

Amber Nikkel, C09-5135 VRW

Univisions-Crimson Holding, Inc, C09-5186 VRW

KI, Inc, C09-5197 VRW

JLK Systems Group, Inc, C10-0076 VRW

L E Hoover Co, C10-0378 VRW

Rokas Beresniovass, C10-0453 VRW

Patrick Keyes, C10-0676 VRW

Gregory Starrett, C10-0682 VRW

Prisco Elec Co, Inc, C10-0782 VRW

Tech Dept of La Mesa and Heather Tremblay, C10-0874 VRW

Matthew Slavin, C10-1291 VRW

Warren Herman, C10-1362 VRW

Alec Berezin, C10-1533 VRW

The Stereo Shop, C10-1603 VRW

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INDIRECT PURCHASER ACTIONS:

Christopher Johnson, et al, 10-0507 VRW

Michael's Co, CV 10-1386 JCS

Bay Area Sys, LLC, C10-1403 EDL

David Carney, Jr, C10-1406 VRW

Alireza Tabatabai, C10-1450 VRW

Aaron Wagner, C10-1451 VRW

James P Ito-Adler, C10-1684 JL

Mary Jane Garland et al, C10-1703 EDL

Cullen Byrne, C10-1722 MEJ

Tom Daley, C10-1727 JL

Ann Carney et al, C10-1738 VRW

Don Cheung, C10-1794 RS

Tina Corse, C10-1834 EDL

Gregory Sinigiani, C10-1847 JCS

Scott Friedson et al, C10-1574 EDL